Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal From Order No. 583 Of 2001
(Old FAFO No. 393 of 1997)

U.P.State Road Transport Corporation through the Regional Manager, Nainital.

… Appellant

Versus

1. Smt. Parwati Devi W/O Late Puran Singh,
2. Km. Bhagwati Bisht,
3. Km. Neema Bisht,
4. Km. Veena Bisht,
5. Km. Pushpa Bisht,
6. Km. Renu Bisht,
7. Master Jagdish Singh Bisht, All respondent nos. 2 to 7 are minor children of late Puran Singh through their mother and natural guardian Smt. Parwati Devi. All residents of near Jila Parishad Dak Bungalow Kathgodam, District Nainital (Claimants)
8. Sri Mohan Lal, Driver of Corporation bus No. UGP-4006 through the Station Incharge Kathgodam.

… Respondents.

Sri Ashish Joshi, Advocate, learned counsel for the appellant-UPSRTC.
Sri M.S.Pal, Sr.Adv. assisted by Sri V.S.Pal,Learned Counsel for the claimant-respondents.

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Date December 21, 2006.
(Per Hon'ble B.S. Verma, J.)

This appeal under Section 173 of the Motor Vehicles Act 1988 (***for short the Act***) is directed against the judgment and award 27-1-1997 passed by the Motor Accident Claims Tribunal/III Additional District Judge Nainital (***for short the Tribunal***) in Motor Accident Claim Petition No. 729 of 1991, Smt. Parwati Devi and others Vs. U.P.State Road Transport Corporation and others, whereby the learned Tribunal has awarded compensation of Rs. 2,01,600/- along with interest @ 12% per annum in favour of the claimants against the opposite parties. The learned Tribunal has also apportioned the compensation amongst the claimants as mentioned in the impugned award.

Brief facts of the case are that Puran Singh son of Dhan Singh (***the deceased***) husband of claimant-respondent no.1 and father of other claimants, aged about 45 years and fitter/electrician of the appellant-UPSRTC lost his life as a result of fatal injuries sustained by him in a motor vehicle accident which took place on 2-8-1991 at 4 p.m. at Roadways Workshop Kathgodam. According to the claimants, the deceased was earning Rs. 1850/- per month. On the fateful day, at about 4 p.m. bus No. UGP 4006 was parked in between to buses in the greasing shed of workshop Kathgodam. The deceased was in the Chowkidar shed. In the meantime, the driver Mohan Lal took out the said bus all of a sudden in a rash, careless and negligent manner and dashed the Chowkidar shed with the result Puran Singh suffered grievous injuries in different parts of his body. He was immediately rushed to the hospital, where he succumbed to his injuries at 7 p.m. the same evening. Due to accidental death of the deceased, claimants being his legal heirs and dependents have filed claim petition for compensation of Rs. Five lacs on different counts.

The U.P.S.R.T.C.-owner of the bus filed its written statement and contested the claim petition. It has denied the death of the deceased in motor accident. It has been asserted that the death of the deceased took place due to falling of the roof of Chowkidar Room and the deceased had no departmental work therein and that the venue of the working of the deceased was 100 mt. away. It has also been asserted that the driver-O.P. No.2 was not authorised to drive the vehicle on 2-8-1991, therefore, the U.P.S.R.C. is liable for compensation and the responsibility for compensation lay upon the driver.

The O.P. No.2- driver of the bus, Mohan Lal, did not file any written statement and did not contest the case, which proceeded ex-parte against him vide order dated 19-5-1993.

On the pleadings of the parties, the learned Tribunal framed as many as five issues in the case. Issue No. 1 related to causing of injuries and death of the deceased Puran Singh as a result of injuries caused by bus No. UGP-4006 owned by the UPSRTC on 2-8-1991. Issue No.2 related to the rash and negligent driving on the part of the driver of the bus. Issue No.3 related to income of the deceased. Issue No.4 related to falling of lintel of Chowkidar room as alleged in para no. 23 of the written statement filed by UPSRTC. Issue No. 5 related to relief.

Before the learned Tribunal, the claimants filed documentary evidence and also examined Jiwan Lal, who lodged the F.I.R. with the police, P.W.1, Tara Chandra, Medical Officer, who conducted autopsy on the dead body, P.W.2, Surendra Singh, an eye witness of the accident, P.W.3, and Smt. Parwati Devi, as P.W.4. From the side of the appellant UPSRTC Chandra Ballabh Karnatak Assistant Mechanic Kathgodam has been examined as D.W.1. The learned Tribunal after hearing both the parties, took up Issue Nos. 1, 2 and 4 together. Ultimately after perusing the record it has been held that the deceased Puran Singh lost his life due to injuries caused by driver of bus No. UGP-4006 due to his negligent driving. The learned Tribunal concluded that the deceased died in the motor accident for which both the opposite parties were liable to pay compensation. The learned Tribunal found that the monthly salary of the deceased was Rs. 1850/- per month. The Tribunal after deducting 1/3rd from the salary and taking into consideration the future prospect of the deceased assessed monthly loss of dependency at Rs. 1,400/-, i.e. Rs. 16,800/- per annum. After applying the multiplier of 12, total compensation has been assessed at Rs. 2,01,600/-. It has also been held that the deceased died in the course of his employment, therefore, the appellant is liable to make payment of the compensation. Ultimately, the claim petition was allowed for compensation of Rs. 2,01,600/- along with interest @ 12% per annum from the date of filing of claim petition till the date of payment.

In this appeal, the impugned judgment and award passed by the learned Tribunal has been assailed on the ground that the respondent no. 8 Mohan Lal was not authorised to drive the vehicle in question, therefore, the Corporation is not liable to pay compensation; that the deceased had died otherwise than due to motor accident and that the finding of the learned Tribunal is not based on appreciation of evidence on record.

We have heard learned counsel for the parties and perused the material on record including the lower court record.

Learned counsel for the appellant vehemently argued that for the negligence of the respondent no. 8 who was authorised to drive the vehicle, the appellant could not be held liable. The learned counsel further hammered the finding of the Tribunal that deceased Puran Singh died on account of injuries received in a motor accident. It was submitted that the deceased had died due to the accidental fall of the lintel of the Chowkidar shed.

The admitted facts of the case are that the deceased Puran Singh was posted as electrical fitter under the employment of appellant at Kathgodam Depot. It is also not seriously challenged that the deceased died in the course of his employment. It is also admitted to appellant that the driver of the bus-respondent no. 8 was negligent and due to his negligence the bus struck against the lintel of Chowkidar check post, which fell to the ground causing injuries to the deceased. It is admitted the offending bus belonged to the appellant-Corporation.

At the out, it may be mentioned that the appellant has not led any documentary evidence before the Tribunal. Only one witness Chandra Ballabh Karnatak has been examined as D.W.1. This witness has stated on oath that on 2-8-1991 he was posted as assistant mechanic at Kathgodam depot workshop. He used to make checking of the defects in the buses taken to the workshop for

repairs. According to him the vehicle in question was stationed there for brake defects. At the relevant time, the driver Mohan Lal took the bus negligently and struck it with the Chowkidar Shed with the result the wall of the shed fell down causing injuries to the deceased. D.W.1 has however stated that the workshop of the electric fitter is situate about 100 yards from the place of accident. In his cross-examination, D.W.1 has admitted that the entire premises where the accident took place in the workshop compound. From a complete reading of the statement of D.W.1 the only thing can be inferred that a motor accident occurred due to the rashness and negligence of the driver Mohan Lal- respondent no.8 and the deceased Puran Singh was in the premises of workshop compound, i.e. inside his duty premises. Therefore, even from a remote consideration it cannot be said that the deceased has not died in the course of his employment.

The learned Tribunal has elaborately dealt with the evidence of the witnesses produced by the claimants. P.W.3 Surendra Singh has given ocular account of the accident and has specifically stated that the opposite party no.2 Mohan Lal struck the bus against the check post of Chaukidar. It is not the case of the appellant that the wall/roof of the said check post had not fallen due to negligence on the part of the driver Mohan Lal. Had the driver of the bus been cautious, the accident could have been avoided. It is fully established that the deceased had suffered grievous injuries as a result of motor accident caused by driver Mohan Lal due to negligent driving on his part and he succumbed to his injuries.

Now the only thing which requires to be answered is whether the owner of the bus shall be liable for compensation for the negligence of driver Mohan Lal. The only objection raised by the appellant in its written statement is that opposite party no.2 was not authorised to drive the vehicle. It is pertinent to mention that the appellant has not pleaded that Mohan Lal was not the driver of the offending bus. It is also not the case of the appellant that at the time of accident driver Mohan Lal had taken the bus for his own use. A

similar matter came up for consideration before the Apex Court in the case of ***State of Maharashtra and others Vs. Kanchanmala Vijaysing Shirke and others [1996(1)T.A.C. 1 (S.C.)].*** The Apex Court while dealing on the relevant point has observed that ***"Vicarious liability of State for payment of compensation to the heirs of deceased of motor accidents due to negligence of its employee- Test to determine the act "in the course of employment"- Authorised act being done in an unauthorised manner- Offending Government Jeep driven by a clerk under the authority of its driver on duty at the time of accident-Dispute revolving around the mode or manner of execution of authority of the master by the servant-Vehicle used for the business of the State and for official purpose- Accident took place due to negligent driving of clerk under the influence of liquor- Whether the State is liable for compensation where the authorised act was performed in an unauthorised manner within the course of employment-Yes."*** In the case before the Apex Court, a government jeep had been driven in unauthorised manner. In the case at hand, the offending bus had been driven by its own driver negligently. The appellant in the memo of appeal has described Mohan Lal as driver of the bus No. UGP-4006, hence it is clear that respondent no. 8 was the driver of the said bus. We therefore hold that the owner of the vehicle is liable for the negligent act of the employee in the course of his employment. The appellant would have taken departmental action against its driver in case he had disobeyed the orders of his employer and the appellant must have filed documentary evidence to that effect. If the stand taken by the appellant in paragraph no. 24 of the written statement is accepted as it is, the case is squarely covered by the Apex Court verdict in the case of ***State of Maharashtra and others Vs. Kanchanmala Vijaysing Shirke and others (supra).***\

We are further fortified in our view by the Apex Court judgment in the case of ***Sohan Lal Passi Vs. P.Sesh Reddy and others [(1996) 5 Supreme Court Cases, 21]*** wherein it has been held that "*Motor Vehicles Act 1939-Ss. 110-B, 92-A & 92-B- Liability of*

owner of the vehicle for motor accident occurring owing to negligent acts of his employees during the course of employment-Test-Act authorised by the owner performed by his employees in an unauthorised manner in the course of employment-Appellant owner of a bus authorizing his driver to drive the bus to carry passengers but driver allowing cleaner/conductor of the bus, also an employee of the appellant, to drive it when accident taking place with scooter which resulting in death of the scooterist- Held, appellant liable to pay compensation to LRs of the victim since the bus was nevertheless being driven for the business of the appellant and not for personal pursuit of the employee-Also established that the negligent act was in the course of employment". The Apex Court has further held that "The crucial test is whether the initial act of the employee was expressly authorised and lawful. Then the employer shall nevertheless be responsible for the manner in which the employees that is, the driver and the cleaner/ conductor executed the authority. This is necessary to ensure so that the injured third parties who are not directly involved or concerned with the nature of authority vested by the master to his servant are not deprived from getting compensation. If the dispute revolves around the mode of execution of the authority of the master by the servant, the master cannot escape the liability so far third parties are concerned on the ground that he had actually authorised the particular manner in which the act was done. In the present case, the accident took place when the act authorised was being performed in a mode which may not be proper but nonetheless it was directly connected within the course of employment. It was not an independent act for a purpose which had no nexus or connection with the business of the appellant so as to absolve the appellant from the liability. The appellant had authorised the driver to drive the vehicle but the driver allowed the cleaner/ conductor who was also the employee of the appellant to drive the vehicle because of which the accident took place. It is not the stand of the appellant that the cleaner/ conductor was driving the vehicle without the knowledge or consent of the driver, for his personal pursuit. He was driving the bus for the business of the appellant, that

is to carry the passengers. **In this background, the appellant cannot escape the liability so far the third parties are concerned on the ground that he had not actually authorised the particular manner in which the act was done. As it has been established that the negligent act of the driver and the cleaner/conductor was "in the course of employment", the appellant shall be liable for the same."**

The argument of the learned counsel for the appellant that the claim petition under the Motor Vehicles Act 1988 is not maintainable is misconceived. It is settled law that claim petition may be filed in respect of injury or death of a workman in the course of his employment arising from use of motor vehicle either under the Workmen's Compensation Act, 1923 or under the Motor Vehicles Act but not under both the provisions.

The appellant has also raised a ground that the finding of the Tribunal is erroneous holding that the accident took place due to use of motor vehicle is against the stand taken by the appellant in paragraph no. 24 of its written statement and the evidence led by it by examining D.W.1 Chandra Ballabh Karnatak, which has already been referred to above.

The last contention of the appellant is that the quantum of compensation has not been properly assessed. The claimants have filed paper no. 24-C showing the salary of the deceased to be Rs. 1,850/- per month. The appellant has not led any evidence to the contrary. The Tribunal has rightly determined the income of the deceased at Rs. 1,850/- per month. Admittedly, the deceased left behind his widow and six minor children at the time of accidental death. The age of the deceased is said to be 45 years. Age of the deceased has not been challenged. It is settled law that future prospect of the deceased can be taken into consideration while assessing the loss of dependency. The loss of monthly dependency has been worked out after deducting 1/3rd from the income of the

deceased. The learned Tribunal has raised the dependency from Rs. 1233/- per month to Rs. 1400/- presuming that deceased might have got promotion/increment in his salary had he not lost his life in the accident. This increase is moderate and fair. Puran Singh would have been in service for further 13 years, i.e. upto the age of 58 years. The multiplier of 12 has been applied in the present case. It may be noted that the widow and children had been deprived of the company, love and affection of the deceased. No amount has been awarded towards these counts including funeral expenses. Taking into consideration the liabilities left by the deceased to be carried by the widow, the amount of Rs. 2,01,600/- as total compensation cannot be said to be on higher side. This amount of compensation along with interest @ 12% per annum has to be shared by as many as seven legal heirs of the deceased as directed by the learned Tribunal.

Having considered all the aspect of the case from all the four corners, we do not find any force in the appeal preferred by the appellant-U.P.S.R.T.C., which is liable to pay compensation along with interest as directed by the learned Tribunal. The award under challenge does not suffer from any infirmity or illegality. The appeal is liable to be dismissed.

The appeal is hereby dismissed with no order as to costs. The judgment and award dated 27-1-1997 is upheld.

The amount in deposit, if any, with this court be remitted to the Motor Accident Claims Tribunal concerned for being paid to the claimant-respondent no.1. On realization of the compensation along with interest, the Tribunal shall ensure investment of the same as directed by the Tribunal.

(B.S.Verma, J.) **(P.C.Verma, J.)**

RCP